

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 INR-10 L-03

NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SPC-03 SS-15

USIA-15 ACDA-19 IO-13 NIC-01 DRC-01 OMB-01 TRSE-00

SCI-06 CEQ-02 EPA-04 /141 W
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P 151356Z SEP 73

FM AMEMBASSY BONN

TO USMISSION BERLIN PRIORITY

INFO SECSTATE WASHDC PRIORITY 7450

C O N F I D E N T I A L SECTION 01 OF 02 BONN 13362

E.O. 11652: GDS

TAGS: PF, GOF, PGOV, WB, GW, UR, US, UK, FR

SUBJECT: FRG ENVIRONMENT OFFICE

REF: (A) BONN'S 12183; (B) BERLIN'S 1572

1. AT 9/14 MEETING AT FRG INTERIOR MINISTRY (MINT) OF
REPS OF US, UK AND FRANCH WITH VON LERSNER, PRESIDENT
OF BUNDESSTELLE FUER UMWELTANGELEGENHEITEN, REPS OF
INTERIOR MINISTRY, FOREIGN OFFICE AND BERLIN SENAT,
QUESTIONS RAISED IN BONN GROUP CONCERNING LERSNER
LETTER TO BLECH AND ITS ENCLOSURES WERE DISCUSSED.
FOLLOWING WAS EXPLAINED:

A. UNDER BASIC LAW FEDERAL GOVERNMENT HAS ONLY LIMITED
COMPETENCE IN ENVIRONMENTAL MATTERS (AIR POLLUTION,
WASTE DISPOSAL, WATER QUALITY AND POLLUTION CONTROL),
INCLUDING AUTHORITY TO PASS LAWS, ESTABLISH HIGHER
AUTHORITIES UNDER ARTICLE 87(3) OF BASIC LAW SUCH AS
PLANNED UMWELTBUNDESAMT, CONDUCT ADMINISTRATIVE TASKS,
AND TO ESTABLISH ENVIRONMENTAL CRITERIA OF GENERAL
APPLICATION IN FRG AND NOT ADDRESSED TO SPECIFIC OR
INDIVIDUAL INDUSTRY OR PERSON. ACTUAL ENFORCEMENT
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OF LAWS AND OF CRITERIA OR REGULATIONS ISSUED BY MINT

REMAINS POWER EXCLUSIVELY OF THE LAENDER AND NOT OF THE BUND, THE LATTER BEING WITHOUT AUTHORITY TO ISSUE DIRECTIVES IN THIS AREA (NO "WEISUNGSRECHT").

B. FOR REASONS UNRELATED TO EVENTUAL LOCATION OF AMT BUT TO GENERAL GOVERNMENT INTEREST IN GREATER UNIFORMITY IN NOMENCLATURE FOR HIGHER AUTHORITIES SUCH AS AMT, NAME TO BE GIVEN PREPARATORY INTERIM BODY UNTIL PROMULGATION OF LAW ESTABLISHING AMT NOT CERTAIN UNTIL DECISION AT CABINET MEETING NOW SCHEDULED FOR SEPTEMBER 19 WHICH MIGHT GIVE INTERIM BODY SAME NAME AS AMT TO BE ESTABLISHED BY LEGISLATION. ERLASS ISSUED JULY 30 1973 CALLING INTERIM BODY "BUNDESSTELLE FUER UMWELTANGELI-GENHEITEN" IS INTERNAL TO MINT, IS NOT PUBLIC AND IS SUBJECT TO CHANGE IN THIS REGARD. IN VIEW OF VON LERSNER'S INDICATION THAT INTERIM BODY WOULD NEED TO OPERATE IN BERLIN IN CONNECTION WITH CONSTRUCTION OF BUILDING AND HIRING OF STAFF FOR AMT, IT WAS POINTED OUT THAT INTERIM BODY WITH SAME NAME AS AMT STILL TO BE CREATED BY ENACTMENT OF LAW COULD LEAD TO LEGAL MISUNDERSTANDINGS AND PERHAPS AVOIDABLE IAL OCCASION FOR USSR REPRESENTATIONS. VON LERSNER WONDERED WHETHER CONVERSION OF INTERIM STELLE ALREADY IN BERLIN TO AMT AFTER PROMULGATION OF LEGISLATION OR AFTER ITS APPLICATION TO BERLIN WOULD NOT AFFORD ESSENTIALLY SAME OPPORTUNITY FOR SUCH DEMARCHES.

C. LEGAL BASIS FOR ERLASS OF JULY 30 IS ORGANISATIONS-GEWALT OF INTERIOR MINISTER UNDER BASIC LAW, NO LEGISLATIVE AUTHORITY BEING REQUIRED TO ESTABLISH AN AUTHORITY, INSTITUTE OR THE LIKE WHEN FUNDS ARE ALREADY AVAILABLE FOR PURPOSE IT TO SERVE. ON BASIS OF PLANNED BUDGETS, VON LERSNER EXPECTS STAFF OF ABOUT 80 BY END OF 1973, WITH FURTHER 120 BY END 1974 AND EVENTUAL MAXIMUM OF ABOUT 800. HE EXPECTS PROMULGATION OF LAW CREATING UMWELTBUNDESAMT ABOUT JAN.-FEB. 1974. US REP EXPLAINED THAT AT LEAST AN APPARENT PROBLEM WAS CREATED BY FACT THAT LAW HAS BERLIN CLAUSE AND REQUIRES ACTION BY BERLIN ABGEORDNETENHAUS AND ACTUAL OR IMPLIED AK APPROVAL TO LAW AND PROBABLY ALSO TO

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LOCATION OF AMT IN WSB; CONSEQUENTLY A FORTIORI EXPECTATION ARISES THAT INTERIM PREDECESSOR, ESTABLISHED MERELY BY MINT ERLASS, REQUIRES CORRESPONDING ACTIONS FOR APPLICATION OF ERLASS IN WSB AND FOR LOCATION OF AMT'S PREDECESSOR THERE. VON LERSNER SUGGESTED THAT AS LAW DOES NOT MENTION LOCATION OF AMT IN WSB LAW COULD BE APPLIED IN BERLIN AND AMT LOCATED THERE THROUGH EXERCISE BY MINISTER OF INTERIOR OF HIS ORGANISATIONS-

GEWALT, UNDER WHICH AMT COULD BE LOCATED IN ANY LAND
OR EVEN ABROAD. HE SUGGESTED THAT MERE LOCATION OF AMT
IN WSB WOULD NOT AND COULD NOT REPRESENT ACT OF
AUTHORITY OVER WSB ANY MORE THAN LOCATION OF FRG
AUTHORITY ABROAD REPRESENTED ACT OF AUTHORITY OVER
COUNTRY WHERE SUCH AUTHORITY LOCATED. VON LERSNER

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 INR-10 L-03

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INFO SECSTATE WASHDC PRIORITY 7451

C O N F I D E N T I A L SECTION 02 OF 02 BONN 13362

FURTHER URGED EXPEDITIOUS ACTION IN VIEW OF TIMETABLE OF
FEDERAL GOVERNMENT'S ENVIRONMENTAL PROGRAM AND AIMS,
PUBLICITY GIVEN TO AMT, AND NEED TO GET AMT ON ITS FEET
AND DOING SUBSTANTIVE WORK.

D. RE OPEN-ENDED SECTION 2(3)(I) OF ERLASS (SENT TO
GREENWALD AND RUECKERT) VON LERSNER STATED THIS WAS
INTENDED AS CATCHALL TO PERMIT REFERRAL TO STELLE OF
FURTHER NON-MINISTRY AND TECHNICAL TASKS AND COULD NOT
INCLUDE REFERRAL TO STELLE OF TASKS LIKE ISSUANCE
OF DIRECTIVES WHICH STELLE WAS WITHOUT LEGAL AUTHORITY
TO ISSUE.

E. ASKED ABOUT ANALOGOUS AUTHORITIES TO STELLE CREATED BY ERLASS AND OPERATING IN WSB SINCE 1952-54, AND ACTION TAKEN BY BERLIN AUTHORITIES AND AK, VON LERSNER AGREED THAT THIS BEST LEFT TO BERLIN SENAT AND ALLIED MISSIONS IN BERLIN TO STUDY. (MENTION WAS MADE THAT FRG MINISTRY FOR HOUSING AND TOWN PLANNING HAS DEVELOPED PLANS FOR LOCATING BUNDESINSTITUT FUER BAUFORSCHUNG IN WSB.) VON LERSNER RECOGNIZED THAT ESTABLISHMENT OF
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AMT IN WSB WOULD SET POST-QA PROCEDURAL PRECEDENT AND THUS OF SUBSTANTIAL INTEREST, PARTICULARLY IN LIGHT OF USSR NOTE.

F. QUESTIONED ABOUT OPEN-ENDED SECTION 2(2) AND 2(3) OF THE GESETZENTWURF, LERSNER SAID THESE FURTHER ADMINISTRATIVE TASKS WOULD BE TECHNICAL AND RESEARCH TASKS OF A NON-MINISTRY NATURE, AND THAT THE AMT WOULD NEVER ITSELF ISSUE ANY DIRECTIVES TO THE WSB OR TO ANY LAND. RE SECTION 3 HE SAID THIS MADE CLEAR THAT IF THE AMT RECEIVED ADMINISTRATIVE TASKS CONCERNING THE ENVIRONMENT FROM ANOTHER MINISTRY OR AUTHORITY, THE AMT COULD NOT, ON THE BASIS OF THE WORK IT HAD PERFORMED, IMPOSE ANY INTERNAL REQUIREMENTS OR ISSUE INSTRUCTIONS TO SUCH MINISTRIES OR AUTHORITIES WITH RESPECT TO MATTERS IN THEIR AREA OF COMPETENCE. VON LERSNER EMPHASIZED THAT THE AMT, AS A "SELBSTSTAENDIGE BUNDESORBERBEHOERDE" WAS TO BE A SEPARATE INDEPENDENT AUTHORITY SUBJECT TO THE DIRECTIVES OF THE MINT BUT NOT, RPT NOT A PART OF THE MINT.

G. VON LERSNER DOUBTED THAT THE APPLICATION OF THE LAW TO THE WSB WAS ESSENTIAL TO THE AMT'S OPERATION WITH THE FUNCTIONS PRESENTLY ENVISAGED FOR IT, WHETHER IT WAS LOCATED IN BERLIN OR ELSEWHERE; INCLUSION OF THE BERLIN CLAUSE WAS STANDARD PRACTICE AND COULD BECOME OF SUBSTANTIVE IMPORTANCE IF IN FUTURE LEGISLATION HAVING THE BERLIN CLAUSE AND APPLIED IN WSB THE AMT WERE TO BE GIVEN FUNCTIONS WITH EXTERNAL LEGAL EFFECTS. HE SAID SOME PRELIMINARY THOUGHT WAS BEING GIVEN TO THE POSSIBILITY OF CONFERRING EXTERNAL FUNCTIONS ON THE AMT RE RESPONSIBILITIES OF THE FRG UNDER WHAT HE CALLED THE OSLO AND HAGUE CONVENTIONS ON WASTE DISPOSAL ON THE HIGH SEAS (EMBASSY WILL CLARIFY THIS REFERENCE ASAP).
2. SENAT REP UNDERTOOK FOR THE STUDY IN BERLIN OF FURTHER ACTION REQUIRED RE ERLASS, GESETZ, AND LOCATION OF STELLE AND/OR AMT IN WSB, TO HAVE LIST COMPILED OF FEDERAL AUTHORITIES, CREATED BY ERLASS AND BY LEGISLATION, OPERATING IN WSB SINCE 1952-54, AND OF PROCEDURES INVOLVED, IF ANY, TO APPLY RESPECTIVE ERLASS OR

LEGIALATION IN WSB AND/OR TO PERMIT THOSE AUTHORITIES
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TO OPERATE OR BE LOCATED IN WSB. IN VIEW OF CURRENT
STUDIES IN BERLIN AS INDICATED PARA 4 OF REFTL (B),
EMBASSY WILL AWAIT FURTHER VIEWS OF MISSION. EMBASSY
PREPARED TO EXPLORE WITH VON LERSNER ANY FURTHER
QUESTIONS MISSION OR DEPARTMENT MAY HAVE TO WHICH
ANSWERS LIKELY AVAILABLE IN BONN.
HILLENBRAND

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